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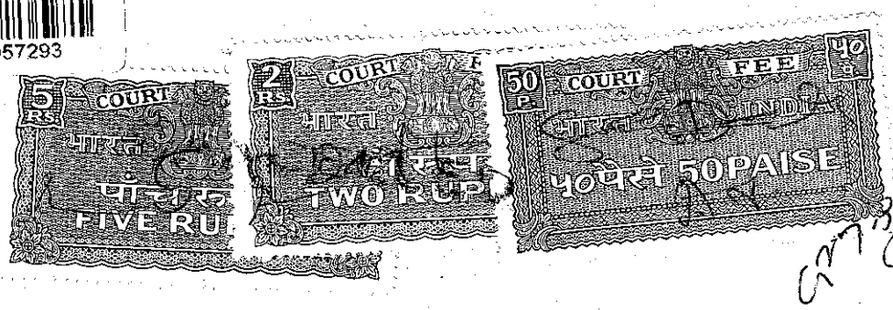

(02)

Cr 773/

IN THE HIGH COURT OF MADHYA PRADESH : AT JABALPUR.

CR.APPEAL NO. 831 OF 1989.

Single Bench (Criminal)

1. Vishwanath s/o (Ramtay) Rajwar aged 25 years,
2. Sukhmanbai widow of (Ramtay) Rajwar aged 45 years,

Both R/o Girjapur P.S.Patna Distt. Surguja (MP). .... APPELLANTS (ON BAIL)

7194
8-9-89
Y.K. Gupta

Vs.

8/9/89

The State of M.P. .... RESPONDENT.

CR.APPEAL U/s.374(2) OF THE CR.P.C.

CONVICTION:		SENTENCE:
U/s. 498A IPC.	:	R.I. for five months.
U/s. 306 IPC.	:	R.I. for 3 years.

(Sentences to run concurrently)

....

(3)

(23)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 837/1989

Appellants : Vishwanath and another.

Versus

Respondent : State of M.P.

Post for pronouncement of judgment on 13-7-2005.

Sd/-
DHIRENDRA MISHRA
Judge

13-7-2005.

(24)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 837/1989

Appellant : Vishwanath and anor.

Versus

Respondent : State of M.P.

Shri A.K. Prasad learned counsel for the appellants.
Shri Vinod Shrivastava learned G.A for the State.

J U D G M E N T

(Pronounced on 13- 7 -2005)

Dhirendra Mishra,J

The appellants have preferred this appeal against the impugned judgment dated 5.9.1989 passed by the Additional Sessions Judge, Baikunthpur (Sarguja) in Sessions Trial No. 218/1987 and convicted the appellants under sections 498-A and 306 of the IPC and sentenced to undergo RI for five years and three years respectively.

The case of the prosecution is that deceased Rangbasiya alias Boondkunwar, the wife of appellant No.1and daughter in law of appellant No.2, committed suicide on 18.6.1987 by hanging. She was married to appellant No.1 some 10-12 years prior to the date of incident. It is alleged that the appellants used to torture the deceased mentally and physically and thereby instigated her to commit suicide. Further case of the

prosecution is that on 18.6.1987 in the morning on being asked by the appellant No.1 the deceased told him of pain in the eyes. Thereafter both the appellants proceeded to the field for spreading the fertilizer and when they returned home in the evening, dead body of the deceased was found hanging in the kitchen. Subsequently, the intimation regarding the incident was given by the husband of the deceased (appellant No.1) in Patna Police Station on 19.6.1987. Merg intimation as per Ex. P-11 was recorded and after preliminary investigation Crime No. 81/1987 was registered as per Ex.P-12. After preparing inquest report vide Ex. P-8 the dead body was sent for autopsy. The doctor who conducted autopsy in his post mortem report Ex.P-7 which has been admitted by the trial Court, has opined that the cause of death was asphyxia due to hanging. Death was opined to have taken place 24 hours before the examination.

After recording the statements of the witnesses the Police filed the charge sheet against the appellants and after committal of the case the charges under sections 306 and 498-A of the IPC were framed. The appellants abjured the guilt. The prosecution examined in all nine witnesses. The appellants took the defence that since the deceased committed suicide by hanging, her parents suspected them behind the incident. Thus the appellants pleaded their innocence and false implication in the case.

Learned trial Court has passed the impugned judgment of conviction and sentence against the appellants on the basis of the statements of father of the deceased namely Ramcharan (PW-1), mother of the deceased namely Ramkali Bai (PW-3) and one Somar Sai (PW-2). Father of the deceased has stated in his statement that the deceased was married to appellant

No.1 some 10-12 years before the date of incident (paragraph No.1). He has further stated that whenever the deceased visited his house she told him that appellant No.1 used to beat her and appellant No.2 was not giving her food. He has also stated that the deceased had two daughters and due to the torturous attitude of the appellants she did not want to go to her matrimonial house and thereupon the Panchayat was convened in the village where he insisted the appellant No.1 to give in writing that he would not torture his daughter then onwards to which he declined. According to PW-1 even the Panchas had not given anything in writing and ultimately he sent his daughter along-with her husband and 5-6 months thereafter she died. Meanwhile, a son was also born to the deceased. Father of the deceased has also stated that in the Panchayat so convened Somar Sai, Inderman, Hiraman, Nanveda, Suder Sai and Suparilal etc, were present but out of them only Somar Sai has been examined by the prosecution as PW-2. It is also stated by PW-1 that when the son was born to the deceased, her mother had gone the matrimonial house of the deceased but she did not tell anything as to how their son in law (appellant No.1) dealt with his daughter (the deceased). He has also stated that since at the time of death of his daughter the appellants did not call him, he suspected that she had been killed by them. In the cross examination he has stated that the proceedings of the Panchayat are reduced to writing but he did not produce the same before the Police.

PW-2 Somar Sai has also stated that 6-7 months before the death, the deceased had visited the house of her father and six-seven days after her arrival there, appellant No.1 had gone to bring her back whereupon her father (PW-1) refused to send her as she was being

tortured by the appellants. He has stated that the appellant No.1 took Darogaram, Phulchand Maniyar, Chhauva etc. along with him to village Narai where a Panchayat was convened in which apart from them, the persons named by PW-1 were also present. According to PW-2 the appellant No.1 had stated before the Panchayat that the deceased did not co-operate in his work and that was the root cause of the dispute between them whereupon the deceased had stated that she worked according to her capacity but even then her husband picks up quarrel with her. Thereafter, according to the statement of PW-2, on the assurance of the persons who accompanied the appellant No.1 the deceased was sent along with the appellant No.1.

PW-3 Ramkali Bai, the mother of the deceased has made similar allegations as of PW-1 and PW-2. She has stated that whenever deceased visited her, complained of being harassed by the appellant No.1 depriving her of adequate food and clothing. Beating by appellant No.1 is also alleged in her statement. However, in paragraph 15 of the statement she has stated that on sixth day of the birth of the son of the deceased she had gone to her daughter's house at Girijapur but the deceased did not tell anything and even in her presence no quarrel etc. was noticed by her. This witness however has been declared hostile. Other witnesses namely Rambriksha PW-4, Bholaram PW-5, Purshottam PW-6 and Ramlal Pw-7 have also been declared hostile and have not supported the case of the prosecution.

Learned counsel for the appellants submits that even if the allegations that have been made the parents of the deceased are held to be correct, they do not constitute the abetment within the meaning of section

107 of the Indian Penal Code and on the basis of such statements the appellants can not be convicted under section 306 of the IPC. He further submits that the deceased died 10-12 years after the marriage and as such the presumption under section 113-A of the Evidence Act could not be drawn against the appellants. However, it is submitted that the Court below has erroneously drawn a presumption against the appellants under section 113-A of the Evidence Act which is contrary to the proviso to the said section.

Learned Counsel for the respondent however supports the impugned judgment terming it as just and proper and the same does not suffer from any infirmity.

From the perusal of the record I find that though PW-2 has stated in his statement that Panchayat was convened some six-seven months prior to the date of incident in the presence of witnesses Darogaram, Phulchand, Maniyar, Chhauva etc. from village Girijapur but none of them has been examined by the prosecution. Apart from parents of the deceased only Somar Sai has been examined as PW-2. Even the Panchayat proceedings which have been reduced to writing as is admitted by PW-1, have not been produced. In these circumstances the prosecution version that six-seven months prior to the date of incident the Panchayat was convened, itself becomes doubtful. Even if the allegation against the appellants is held to be established, it can not be said that the appellant No.1 either aided or instigated the deceased to commit suicide and the learned Trial Court on the basis of above evidence and on the basis of presumption under section 113-A of the Evidence Act has convicted the appellants under section 306 of the IPC which is patently illegal and liable to be set aside.

So far as the allegation of cruelty is concerned, the same has been defined under section 498-A of the IPC which is reproduced as under:

498-A. "**Husband or relative of husband of a woman subjecting her to cruelty**_ Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation _ For the purposes of this section, "cruelty" means –

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

Thus taking into consideration the nature of allegations and the statements of the witnesses referred to above in preceding paragraphs I am of the opinion that they are not such which are covered within the meaning of this section as each and every conduct of harassment can not be termed as cruelty and the act of the accused persons should be as grave as it is likely to drive a woman to commit suicide or to cause danger to life, limb or health. The acts alleged against the appellants in this case are that there was some dispute between the husband and wife regarding non co-operation of the

(23)

deceased in the work of the husband and as a result of which at some point of time she was physically assaulted by her husband which can not tantamount to cruelty as mentioned under section 498-A of the IPC.

Thus taking into consideration that the deceased gave birth to two daughters and a son and that even at the time of birth of the son which took place after the Panchayat which was convened 6-7 months before the date of incident, there was no allegation that she was in any way tortured by the appellants, establishes that the act of the appellants can not be termed as cruelty within the meaning of section 498-A of the IPC.

Thus in view of the aforesaid discussion, I am of the opinion the Court below was not justified in arriving at the conclusion that the prosecution has established the charge under section 498-A of the IPC.

In the result, the appeal is allowed. Impugned judgment of conviction and sentence is set aside. Appellants are acquitted of the charges leveled against them. The bonds executed by the appellants stand discharged.

Sd/-
DHIRENDRA MISHRA
Judge

13-7-2005.